IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 826 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR SANTLAL VADHVA(ARORA), - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR VILAS G GOSWAMY for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
MR VL HIRAPARA for Respondent(s) : 2,
UNSERVED-REFUSED (N) for Respondent(s) : 3,
MR HRIDAY BUCH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – husband

has prayed for an appropriate order to quash and set aside the impugned order dated 2.7.2004 passed by the learned JMFC, Kalol passed in Criminal Misc. Application No.117 of 2002 as well as the order passed by the learned Additional Sessions Judge, 4th Fast Track Court, Panchmahals at Godhra dated 28.2.2005 passed in Criminal Revision Application No.84 of 2004.

2. Shri Virendra Baheti, learned advocate appearing for the petitioner has vehemently submitted that both the Courts below have committed an error in awarding the maintenance to the respondent Nos.2 and 3 inasmuch as there was already a settlement between the parties dated 20.1.2007 in Criminal Misc. Application No. 55 of 2005 filed by the petitioner for the recovery of the amount of maintenance, in view of the settlement, the wife has forgone her demand as claimed in Criminal Misc. Application No. 55 of 2005 and therefore, it is requested to allow present petition.

3. Shri Hriday Buch, learned advocate appearing for

the respondent Nos.2 and 3 while relying upon the affidavit in reply filed on behalf of the respondent Nos.2 and 3 has submitted that as the petitioner was required to pay approximately an amount of Rs.1,77,000/- towards the arrears of maintenance and was in jail, the petitioner made a show to enter into settlement and agreed to take back the respondent Nos.2 and 3, however, while returning, the respondent Nos.2 and 3 were left alone by the petitioner at Savalia bus stand by asking the respondent Nos. 2 and 3 to wait for the cold drink and the petitioner went to get cold drink and subsequently he never returned. Thus, it is submitted that the so-called settlement and the proposal of the petitioner to take back the respondent Nos. 2 and 3 was only an eye-wash and the said settlement was never acted upon. It is also further submitted by him that even the order passed by the learned JMFC dated 2.7.2004 passed in Criminal Misc. Application No. 117 of 2002 by which the learned JMFC passed an order awarding the maintenance to the respondent Nos.2 and 3 at

the rate of Rs.1,000/- per month for wife and Rs.500/-per month for the child was never challenged by the petitioner before the learned Revisional Court and thereafter, in Revision Application No. 84 of 2004 filed by the respondent Nos.2 and 3, the learned Addl. Sessions Judge, 4th Fast Track Court, Panchmahals at Godhra passed an order enhancing the amount of maintenance from Rs.1,000/- per month to Rs.3,000/- per month and from Rs.500/- per month to Rs.2,000/- per month to the wife and child respectively. It is submitted that even the said order was passed by the learned Revisional Court as far back as in the month of February – 2005, still the petitioner did not challenge the same and both the aforesaid orders are challenged by the petitioner in the present proceedings in the year 2007. Under the circumstances, it is requested to dismiss the present petition.

4. Shri M.R.Mengde, learned APP appearing for the State has requested to pass an appropriate order while adopting the submissions made on behalf of

the respondent Nos. 2 and 3.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that the learned JMFC, Kalol passed an order dated 2.7.2004 in Criminal Misc. Application No. 117 of 2002 awarding maintenance to the respondent Nos. 2 and 3 at the rate of Rs.1,000/-per month for the wife and Rs.500/- per month to the child, however, the petitioner did not challenge the same before the learned Revisional Court. Even thereafter, the respondent Nos. 2 and 3 filed Criminal Revision Application No. 84 of 2004 before the learned Revisional Court and the learned Revisional Court by its judgment and order dated 28.2.2005 partly allowed the said revision application enhancing the amount of maintenance from Rs.1,000/- per month to Rs.3,000/- to the wife and from Rs.500/- per month to Rs.2,000/- per month to the child and inspite of the fact that the said order was

passed by the learned Revisional Court on 28.2.2005, the petitioner did not challenge the same till the present petition is filed in the year 2007, more particularly, on 18th April, 2007. It appears that in the meantime, as the amount of maintenance was not paid by the petitioner, an application was submitted by the respondent Nos. 2 and 3 for the recovery of the same before the learned JMFC, Kalol in the year 2005 and in that the petitioner agreed to take back respondent Nos. 2 and 3 and submitted an application dated 10.1.2007 and made a show that he will take back the respondent Nos. 2 and 3, however, considering the affidavit in reply, it appears that the said agreement was never acted upon and while taking back the respondent Nos. 2 and 3, the petitioner ran away and/or left the respondent Nos.2 and 3 at the ST bus stand. Thus, even the settlement / agreement dated 10.1.2007 has never acted upon by the petitioner. Even otherwise, considering the pursis dated 10.1.2007 it appears that the said pursis was given by the respondent Nos. 2 and 3,

more particularly, the respondent No.2 without prejudice to her rights to get the maintenance. Under the circumstances and considering the above, the prayer of the petitioner to quash and set aside the aforesaid orders cannot be accepted. The learned advocate appearing for the petitioner has failed to show any illegality committed in the orders passed by the learned JMFC, Kalol and/or the learned Revisional Court, Panchmahals at Godhra. There is no jurisdictional error much less an error of law committed by any of the Courts below which requires interference of this Court in exercise of powers under Article 226 of the Constitution of India. Even there is no justification for delay in preferring the present petition challenging the aforesaid two orders. Under the circumstances, there is no substance in the present petition and the same deserves dismissal and is accordingly dismissed. Notice discharged.

(M.R.Shah, J.)

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